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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	09/674,996	
	Filing Date	Nov. 2, 2000	
	First Named Inventor	William E. James	
	Art Unit	3764	
	Examiner Name	Tam Nguyen	
Total Number of Pages in This Submission	8	Attorney Docket Number	-----

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant: William E. James

Examiner: Tam Nguyen

Application No.: 09/674,996

Art Unit: 3764

Filing Date: Nov. 2, 2000

Confirmation No.: 1327

Title: Automatically Variable Stride Walk-Run-Stepper Pedal Exerciser

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**REPLY BRIEF**

( under 37 CFR 41.41 )

Mail Stop Appeal Brief - Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sirs:

With this Reply Brief appellant requests continuation of appellant's Appeal  
( Brief filed June 14, 2007 ) and replies to examiner's answer of Nov. 16, 2007.

I hereby certify that this correspondence  
is being deposited with the U.S. Postal Service  
as first class mail in an envelope addressed to  
the above address on: JAN. 12, 2008

*William E. James*

**1. Status of Claims:**

Claims 1 - 21 are canceled.

The following claims are in appeal:

- Claims 22, 23, 26, 27, 36 and 37 are rejected;
- Claims 24, 25, 28 - 35, 38, 39, 40 and 41\* are withdrawn as subject to restriction.

\* Note: Claim 41 is a second independent claim and has not received any Action comment.

**2. Grounds of Rejection to be Reviewed on Appeal:**

**a) Rejection under 37 CFR 1.142(b): ( claims 38 and 40 ):**

Claim 38 is rejected as being drawn to non-elected species as shown in Fig. 7 (Version B-2, pg. 4 of Appeal Brief).

Claim 40 is rejected as being drawn to non-elected species as shown in Figs.17 - 19 ( Version E, pg. 5 of Appeal Brief ).

**b) Rejection under 35 USC 112, first paragraph: ( claims 22, 23, 26, 27, 36 and 37 ):**

Claim 22 is rejected as not being supported by adequate description in the Specification.

Claims 23, 26, 27, 36 and 37 are rejected being dependent on rejected base claim 22.

Note: Claims 23- 40 are all dependent on claim 22, while claim 41 is a dependent claim similar to claim 22, but has not received any comment in Actions to date.

### 3. Argument:

The examiner does not state to which particular version or species he refers nor by page, line or figure, but since he refers to: “air in the cylinders” (pg. 3, ln. 2), appellant assumes it is in reference to Version B as appellant listed in the Appeal Brief, pg. 4 (Figs. 4-6). This version is described in the Specification, pg. 18, ln. 21 and is a pneumatic, user-powered version. (Key words below underlined for emphasis:)

The Specification description, starting pg.18, ln.35, is simple and straight forward: “A Right Track Bar Cylinder 38 ( note that this is a vertical cylinder responding to step-down force only on the Right Pedal 16) containing a Right Support Spring 40 supports a Right Track Bar 12 and a corresponding Right Pedal 16 and provides pressurized air through a Right to Left Tubing 44 to a Left Return Cylinder 43 which pushes Left Pedal 17 forward as Right Pedal 16 is pushed downward.” Continuing on pg. 19, ln.1 , it is explained how Left Track Bar Cylinder 39 (responding to step down on the Left Pedal 17 is linked through Tubing 45 to Right Return Cylinder 42 to push Right Pedal 16 forward as Left Pedal 17 is pushed downward. In Fig. 4 it can be seen that, as described, Tubing 44 connects the output end of Right Track Bar Cylinder 38 (or the Right Pedal “step-down cylinder”) to the Left Return Cylinder 43 to return the Left Pedal 17 as the Right Pedal 16 is pushed downward at step-down. Likewise, Tubing 45 connects the Left Track Bar Cylinder 39 to Right Return Cylinder 42 to push the Right Pedal 16 forward as the Left Pedal 17 is pushed downward at step-down.

Therefore it is obvious that pedal return is dependent only on step-down on the opposite pedal and is independent of stride or length of travel of the opposite pedal ( or any pedal ) as in claim 22 , there being no connection between the two Return Cylinders 42 and 43.

In light of the above, showing clearly that each pedal is returned in response only to the opposite pedal’s downward motion on step-down, and returns independent of stride, it is very difficult to imagine how one could be confused on this issue.

**Argument** (continued)

The examiner states (pg. 3, ln.4): “In other words , as one pedal moves backwards, the other moves forward at the same rate and thus distance.” Also, (pg.3, ln. 8): “...it is not clear to the examiner which components of the invention allow for a first foot pedal to return to the step-down position at the end of each stride independently of stride length of the second foot pedal.” The examiner’s interpretation is patently wrong.

There is obviously no connection whatever between the pedals (in any of the seven versions - see below) that would cause one pedal to move forward as the opposite pedal moves rearward at the same rate or any rate at all. It was explained early ( pg. 4) in the Specification, in fact, that (ln. 28): “ machines directly connecting the pedals for equal and opposite back and forth motion do not provide realistic, normal walk-run action with variable length strides. The first four pages of the Specification outline and explain “the problem” in the field of pedal type exercisers and their inability to provide variable stride normal walk-run action, and that the problem is a result of the typical equal and opposite pedal connection and action. Then, on page 5 the invention’s objectives are summarized , especially (ln. 16): “ to provide a walk-run reciprocating pedal exercise machine in which the return of each pedal forward to the step-down position from varying stride lengths is initiated and caused by the user’s front foot step-down and accompanying opposite foot lift-off action, these two essentially concurrent actions always marking each end of stride.” Appellant then went on to fully describe seven versions of the invention in detail as listed in the Appeal Brief ,pages 4 -5 , with short descriptions paraphrasing the referenced section of the Specification. All seven versions were designed to fulfill the above objective.

Each of the seven versions of the invention accomplishes the pedal return “...at end of stride independently of stride...” by somewhat different means as follows:

- Version A has a direct mechanical connection between downward motion (only) of the stepped-on pedal to the return of the opposite pedal.

**Argument** (continued):

- Version B (above described vs. examiner's erroneous interpretation) has a direct pneumatic (master- slave cylinders) connection , acting essentially the same as version A.

- Version B-2 employs an external compressed air source and has "limit valves" operated by the pedals' (small) downward movement to valve air to the opposite pedal's return cylinder as the forward pedal is stepped on.

- Version C has a return spring under each pedal that is compressed during stride by a motor so that the spring returns the (same) pedal forward when the rear striding foot completes the stride and lifts ("end of stride"), the motor drive disengaging.

- Version D also has a return spring , but no motor, with the user's foot force rearward during the stride aided by flywheel momentum extending the spring , which then , returns the (same) pedal at foot lift-off or "end of stride".

- Version E has a motor-driven air pump providing pressurized air controlled by pilot valves (air pressure sensing) responding to step-down and lifting of the foot so that each pedal is allowed to move rearward (stride) in response to step-down on that pedal and is returned forward in response to lifting the foot.

- Version E-2 also has a motor-driven air pump and pilot valves to not only return the pedal upon foot lifting, but also power rearward motion upon step-down on the pedal.

All of this shows that appellant has provided a complete and clear description of the construction and operation of the invention , going beyond the norm to show a wide variety of designs or arrangements that accomplish the stated objectives of the invention and all of which fully meet independent claims 22 and 41. As argued previously, the independent claims 23 - 40 are valid claims as further variations upon the means described in claim 22.

**Argument** (continued)

[ Note: Since the examiner indicated he encourages communications by phone to discuss this, appellant must point out that prior experience with calls to the examiner gives little to no confidence any reasoning is possible. In response to applicant's Amendment of April 30, 04 and following Advisory "not entered" of Oct. 4, 04, applicant called Nov. 1, 04 to discuss the obvious errors in the examiner's description of the prior art (already fully pointed out in the Amendment). The examiner, though not refuting anything applicant explained, finally kept his position. Calls to the SPE and again to the examiner still resulted in examiner saying: "I'm confident of my position." A call to the new SPE, Dec. 14, 04 (after many tries over many days) resulted in: "I have no authority...". And now applicant is faced with equally obvious new errors in the examiner's answer. It is now over seven years and over nine years since Provisional! ]

Therefore, appellant respectfully requests that his Amendment of April 30, 2004 be entered and that the corrections and revisions therein and claims 22 through 41 be allowed.

Respectfully submitted,



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Jan.12, 2008